

UNITED STATES OF AMERICA

Plaintiff,

v.

**UNITED STATES CERAMIC TILE
COMPANY**

Defendant.

**UNITED STATES CERAMIC TILE
COMPANY**

Defendant.

Plaintiff, the United States of America, by and through the Attorney General of the United States, and at the request of the Administrator of the United States Environmental Protection Agency (EPA) alleges that:

1. This is a civil action brought pursuant to the Solid Waste Disposal Act, 42 U.S.C.A. §§ 6901 , et seq., commonly known as the Resource Conservation and Recovery Act (“RCRA”), for a declaratory judgment against United States Ceramic Tile Company (“U.S. Ceramic Tile”) obligating it to perform corrective measures at its manufacturing facility located in East Sparta, Ohio. The civil action is also brought to enforce certain provisions of a consent decree between the United States and U.S. Ceramic Tile (and predecessors Ceramicus Inc., Romany Ceramics, Inc., and Sparta Mosaics, Inc.), entered by this Court on November 30, 1988 in Civil Action No. C86-5152A for violations alleged against U.S. Ceramic Tile pursuant to RCRA.

JURISDICTION AND VENUE

2. This court has jurisdiction over the subject matter herein and over the parties named in this complaint pursuant to 28 U.S.C. §§ 1331, 1345 and 42 U.S.C. §§ 6928(a) and 6928(h), because the violation complained of and the claims asserted herein arose in this district, and the defendant corporation does business in this district.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(c) and 42 U.S.C. § 6928(a)(1).

NOTICE

4. Notice of commencement of this action has been given to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

DEFENDANT

5. Defendant U.S. Ceramic Tile is a corporation organized and existing under the laws of the State of Delaware. U.S. Ceramic Tile owns and operates a ceramic tile manufacturing facility at 10233 Sandyville Road, East Sparta, Ohio. U.S. Ceramic Tile is the successor corporation to the named defendants in Civil Action No. 86-5152A (United States Ceramic Tile Company, CeramicUS Inc., Romany, Inc., and Sparta Mosaics, Inc.).

STATUTORY AUTHORITY

6. In 1976, Congress enacted the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq., to create a comprehensive program of hazardous waste management administered by EPA. The statute empowers the Administrator of EPA to identify and list hazardous wastes, and to regulate hazardous waste generators, transporters, and the owners and operators of treatment, storage and disposal facilities. See 42 U.S.C. §§ 6921 - 25.

7. The primary mechanism used by EPA, or an EPA authorized state, in enforcing its regulatory program, with respect to the owners and operators of facilities, is the issuance of permits for new and existing hazardous waste treatment, storage, and disposal facilities. See 42 U.S.C. § 6925. Facilities in existence on the effective date of EPA's permitting regulations are treated as having a permit, and granted "interim status" to operate until final disposition of their permit application is made, provided they comply with certain statutory and regulatory requirements. See 42 U.S.C. § 6925(e).

8. The regulatory requirements for "interim status" facilities include: waste analysis and inspection procedures, personnel training, contingency plan and emergency procedures, recordkeeping, groundwater monitoring, closure and post closure and financial responsibility requirements. See 40 C.F.R. Part 265.

9. In the fall of 1983, while Congress was considering the reauthorization of RCRA, the General Accounting Office released a report describing widespread non-compliance with basic requirements of the interim status regulations, particularly groundwater monitoring and financial responsibility.

10. In the wake of these disclosures, Congress amended RCRA to provide that all existing hazardous waste land disposal facilities would automatically lose interim status unless they certified before November 8, 1985 that they were in compliance with all applicable groundwater monitoring and financial responsibility requirements. See Section 3005(e)(2), 42 U.S.C. § 6925(e)(2). It was the intent of Congress in passing this provision to ensure that land disposal facilities had the financial ability to clean-up groundwater contamination, should it occur, and to undertake monitoring to ascertain if contamination was, in fact, occurring. This

provision recognizes the susceptibility of groundwater to toxic chemical contamination from hazardous waste sites and the potentially dire consequences such contamination has on public health and the environment. See generally 129 Cong. Rec. H 8133-50 (daily ed. Oct. 6, 1983).

11. On June 30, 1989, the State of Ohio received final authorization to administer and enforce its own hazardous waste management program in lieu of the Federal program under Subtitle C of RCRA. 40 C.F.R. § 272.1800. Chapters 3745-65 and 3745-66 of the Ohio Administrative Code parallel the federal regulation stated above.

12. Persons who fail to meet the requirements of RCRA Section 3005(e)(2) and continue to operate are subject to administrative and/or civil actions under RCRA Section 3008, 42 U.S.C. § 6928. Pursuant to Section 3008(h) of RCRA, if there is or has been a release of hazardous waste into the environment from a facility authorized to operate under Section 3005(e) of RCRA, the Administrator of EPA, after giving notice to the authorized state, may commence a civil action in United States District Court for appropriate relief, including a temporary or permanent injunction, 42 U.S.C. § 6928(h).

GENERAL ALLEGATIONS

13. U.S. Ceramic Tile is a corporation organized and existing under the laws of the State of Delaware and is a person as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 CFR § 260.10.

14. The U.S. Ceramic Tile facility ("Facility") is located on approximately 800 acres of land at 10233 Sandyville Road, East Sparta, Ohio. It is bordered by Nimishillen Creek to the east and by the town of East Sparta to the north. Strip mined uplands are located to the west of the Facility and the town of Sandyville is located approximately one-half mile to the south.

15. As early as 1980, U.S. Ceramic Tile was a generator of hazardous waste and treated, stored or disposed of hazardous waste at the Facility in a surface impoundment and waste pile subject to interim status requirements at 40 CFR Part 265.

16. The Facility generated equipment wash water containing hazardous constituents. Historically, the wash water was discharged to an unlined surface impoundment to allow suspended solids to settle out prior to discharge into Nimishillen Creek. The discharge was subject to National Pollutant Discharge Elimination System ("NPDES") permit 3IN00035001 and, during the period when the surface impoundment was in use, on occasion exceeded the NPDES-permitted discharge limits for lead and zinc which were set to protect aquatic life habitat in Nimishillen Creek.

17. U.S. Ceramic Tile occasionally dredged the surface impoundment and placed the sediment along the surface impoundment perimeter in a waste pile. Following grab samples on December 15-16, 1986 by EPA, it was determined to exhibit the characteristic of Extraction Procedure (EP) toxicity and was a hazardous waste.

18. A Consent Decree was entered by this Court on November 30, 1988, between U.S. Ceramic Tile and the United States on behalf of U.S. EPA, in settlement of a complaint and amended complaint filed in 1986 by the United States in Civil Action C86-5152A pursuant to Section 3008(a) of RCRA ("1988 Judicial Consent Decree").

19. The 1988 Judicial Consent Decree required U.S. Ceramic Tile to cease all treatment, storage and disposal of hazardous waste at the Facility, except in accordance with the EPA-approved closure plan. A requirement of the closure plan, approved by U.S. EPA and the Ohio Environmental Protection Agency (OEPA), was the construction of a RCRA landfill at the

U.S. Ceramic Tile Facility for the purpose of disposing of hazardous waste and contaminated soils from the Facility's surface impoundment and waste pile. The 1988 Judicial Consent Decree also required U.S. Ceramic Tile to implement a groundwater monitoring program, and to use best efforts to meet financial responsibility and liability insurance requirements as mandated by RCRA.

20. U.S. Ceramic Tile constructed a 2.984-acre landfill at the north end of the former surface impoundment at its Facility. On August 1, 1994, U.S. Ceramic Tile submitted a closure certification to U.S. EPA and OEPA regarding its constructed landfill.

21. U.S. EPA and OEPA allege that U.S. Ceramic Tile has violated the 1988 Judicial Consent Decree and the requirements of the federal and/or state hazardous waste programs by not complying with the requirements of the Closure Plan and by not complying with the requirements to use best efforts to obtain financial responsibility and liability insurance until approximately June, 1997.

22. U.S. Ceramic Tile has been conducting a groundwater assessment monitoring program since June 1989 in connection with the former lagoon and waste pile. Metals, including arsenic, barium, cadmium, chromium, lead, and zinc, have been detected in groundwater.

23. Certain wastes found at the Facility are hazardous wastes pursuant to Sections 1004(5) and 3001 of RCRA; 42 U.S.C. §§ 6903(5) and 6921; 40 CFR Part 261; and Subpart S, § 264.501, 55 Fed. Reg. 30874 (July 27, 1990), and they may pose actual or potential threats to human health or the environment.

CLAIM I: CORRECTIVE ACTION UNDER SECTION 3008(H) OF RCRA

24. U.S. Ceramic Tile's operation of its Facility as a hazardous waste treatment,

storage or disposal facility on and after November 19, 1980 made it subject to the operating standards applicable to "interim status" facilities. See 42 U.S.C. § 6925(e).

25. U.S. Ceramic Tile's Facility has released hazardous waste resulting in the contamination of soil, groundwater and surface water, which must be corrected to protect human health and the environment.

26. Pursuant to Section 3008(h) of RCRA, if there is or has been a release of hazardous waste into the environment from a facility authorized to operate under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), the Administrator of EPA may commence a civil action in United States District Court for appropriate relief, including a temporary or permanent injunction, 42 U.S.C. § 6928(h).

CLAIM II: VIOLATIONS OF 1988 JUDICIAL CONSENT DECREE

27. U.S. Ceramic Tile failed to perform closure at its Facility in accordance with the approved closure plan which was incorporated into the 1988 Judicial Consent Decree.

28. Until June 27, 1997, U.S. Ceramic Tile failed to obtain liability insurance coverage for non-accidental and sudden accidental occurrences, or alternatively, demonstrate best efforts to obtain insurance as required by the 1988 Judicial Consent Decree.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court for an order granting the following relief:

1. U.S. Ceramic Tile is to prepare and implement a corrective action plan acceptable to EPA to sample, analyze and study the hazardous waste contamination caused by U.S. Ceramic Tile to groundwater, surface water and soil;

2. U.S. Ceramic Tile is to prepare and implement a plan acceptable to EPA to take all necessary steps to clean up all hazardous waste contamination caused by U.S. Ceramic Tile;
3. U.S. Ceramic Tile is to comply with all applicable statutory and regulatory requirements under RCRA pending a complete clean up of its Facility; and
4. U.S. Ceramic Tile is required to pay the accrued stipulated penalties due for its violations of the 1988 Judicial Consent Decree; and
5. All other relief this Court deems necessary and appropriate.

Respectfully submitted,

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